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**STATE OF WASHINGTON
KING COUNTY SUPERIOR COURT**

PIERCE COUNTY, et al.,

 Plaintiffs,

 v.

STATE OF WASHINGTON, et al.,

 Defendants.

NO. 02-2-35125-5 SEA

STATE OF WASHINGTON'S
MEMORANDUM IN OPPOSITION
TO PLAINTIFFS' MOTION FOR
SUMMARY JUDGMENT AND IN
SUPPORT OF DEFENDANTS'
MOTION FOR SUMMARY JUDGMENT

1 Therefore, any bondholders who purchased bonds in light of these disclosures simply
2 chose to assume the risk that I-776 would be enacted and that, as a result, collection of King
3 County's license fee would cease. None of the cases cited by the plaintiffs concerns a bond
4 issue in which bond purchasers had been fully informed, as here, that a pending change in state
5 law might eliminate one of the sources of revenue pledge to meet bond obligations.

6 It would be poor policy to overlook this critical distinction and to find that King
7 County's 2002 pledge was sufficient to guarantee continued collection of the fee. The
8 constitution protects bondholders from adverse changes in the security pledged to meet their
9 legitimate expectations, but it does not protect bondholders who, after being fully informed,
10 take calculated risks. Likewise, it does not protect King County, as the bond issuer, from the
11 inconvenience of paying the principal and interest on its bonds from the other adequate sources
12 of revenue listed in its Official Statement. Furthermore, the courts should avoid encouraging
13 local governments to look to last-minute bond pledges as a temptingly convenient way to
14 "lock-in" their continued authority to keep collecting unpopular taxes in the face of initiatives
15 or other legislative action.²⁶ As to King County, then, the Court should declare that I-776 can
16 be fully implemented, and should direct that collection of the King County fee should
17 discontinue, and that amounts previously collected should be refunded to those who paid the
18 fee since December 5, 2002.

19 **3. The Court does not yet have sufficient information to decide the issues**
20 **concerning Sound Transit's 1999 bonds, although the court could declare**
21 **the applicable legal principles.**

22 Sound Transit issued bonds in 1999. Sound Transit's MVET was pledged, along with
23 certain other revenue, as security for these bonds. Prelim. Official Statement, Sound Transit

24 ²⁶ Under the most extreme interpretation, a county could pledge its entire fee revenues for repayment of
25 a single small bond (say, \$100) with a long term (say, 30 years) and could thereby prevent the state from
26 eliminating or reducing the fee for the entire term of the bond, even though the fee might produce annually
hundreds or thousand times as much revenue as needed to meet obligations.

1 1999 Bonds at 14.²⁷ In contrast to King County's bonds, Sound Transit's bonds were not
2 issued at a time when I-776 was pending before the voters, and Sound Transit had no basis or
3 occasion to disclose to its bond purchasers that Sound Transit's authority to impose its MVET
4 might be repealed. Unlike purchasers of King County's 2002 bonds, then, purchasers of Sound
5 Transit's 1999 bonds had a reasonable expectation that Sound Transit's MVET revenue was,
6 and would continue to be, a source of funds to meet Sound Transit's bond obligation.

7 However, Sound Transit has addressed its bond impairment issue only in the broadest
8 of terms. The Sound Transit motion does not directly argue that implementation of I-776
9 would impair Sound Transit's bonds (although that is implied) and includes only a short
10 discussion contending that Section 7 of I-776 should not be construed as requiring Sound
11 Transit to repay its bonds on an accelerated schedule.

12 The general rule is that a government cannot breach contracts by refusing to collect
13 taxes pledged for bond repayment:

14 Generally, when a government agency with taxing power is authorized
15 by statute to levy a tax and to appropriate the proceeds thereof due to the
16 payment of bonds, the statutory authority to levy the tax may be regarded as
17 mandatory and not merely permissible. Accordingly, after bonds have been
18 issued, validated and sold, the statutory authority to devote governmental
19 revenues to the retirement of bonds becomes a contractual duty to do so. Once
20 bonds or other obligations are issued, any legislation which has the effect of
withdrawing the taxing powers of the obligor, or of limiting or diminishing
those powers to such an extent as to deprive it of the means of paying the
outstanding obligations, impairs the obligation of the contracts, violating the
Federal Constitution and State Constitutions.

21 64 Am. Jur. 2d *Public Securities and Obligations* § 360 (2002). (Footnotes omitted).²⁸

22
23 ²⁷ The Preliminary Official Statement is Exhibit E to Sound Transit's motion for summary judgment.

24 ²⁸ This rule appears to be followed in the Washington cases, such as *Tyrpak v. Daniels*, 124 Wn.2d 146,
25 874 P.2d 1374 (1994) (port district could not annex territory from adjoining district where effect would be to
26 reduce taxable valuation of second district, thus impairing its bonds) and *Municipality of Metropolitan Seattle v. O'Brien*, 86 Wn.2d 339, 544 P.2d 729 (1976) (State obligated to continue remitting revenue from special motor vehicle excise tax to METRO when the revenue was security for METRO bonds).

1 The facts before the court may be sufficient to find that Sound Transit's MVET must be
2 collected, notwithstanding I-776, until the bondholder's rights are otherwise satisfied or
3 protected.²⁹ A finding on that point would not resolve all issues in connection with Sound
4 Transit's legal obligations, however. Some states have held bond obligations are not impaired
5 "[i]f a bond issuing entity is clearly able to repay its obligations within the statutory and
6 constitutional limitations." 64 Am. Jur. 2d *Public Securities and Obligations* § 360.
7 Washington courts have apparently not ruled on this issue. Whether Sound Transit has other
8 revenues which could be used to meet its bond obligations without impairing any contracts is a
9 factual issue, and cannot be resolved without further proceedings. Such information would
10 also assist the court in interpreting Section 7 of I-776, which may, without directly mandating
11 early bond retirement, provide strong evidence of voter intent.³⁰

12 III. CONCLUSION

13 For the reasons stated above, the Court should deny the summary judgment motions of
14 the Pierce County plaintiffs and of the Sound Transit plaintiffs on all the constitutional issues
15 raised, and should grant summary judgment to the defendants declaring that Initiative Measure
16 No. 776 is constitutional. The Court should declare that full implementation of Initiative 776
17 would not impair King County's 2002 bonds. If the Court finds that full implementation of
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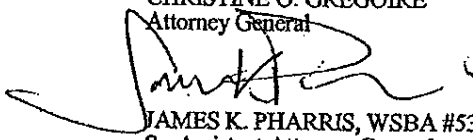
19 ²⁹ Even if it proves necessary to continue collecting Sound Transit's MVET for a period of time, I-776 is
20 otherwise constitutional and should be implemented to the maximum extent possible at this time. If the Initiative
21 is implemented except for Sound Transit's existing MVET, it will at least have the following effects: (1) those
22 counties who have never enacted a motor vehicle fee will be prevented from doing so; (2) the four counties who
23 had previously imposed the fee will be prevented from re-imposing it; (3) Sound Transit will be prevented from
24 increasing its motor vehicle excise tax (it had not been levying up to the full amount permitted by
25 RCW 81.104.160); and (4) other transit agencies will be prevented from levying this tax. Given the choice
26 between this situation, which represents "most of a loaf" from the taxpayer point of view, and declaring I-776
void, the voters would prefer the former. The Initiative contains a severability clause making this abundantly
clear. I-776, Section 10. This is more than sufficient answer to the plaintiffs' contentions that the Initiative is not
severable. Pierce Cy. Mot. at 46-49.

³⁰ A related question is whether, in light of the repeal of Sound Transit's MVET taxing authority, Sound
Transit has an obligation to restrict its future use of MVET revenues to repayment of the 1999 bonds. Because
these are questions of statutory interpretation rather than constitutional law, their resolution could be deferred
until after constitutional questions have been dealt with.

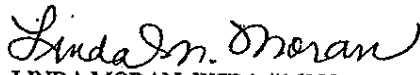
1 Initiative 776 would impair the bond obligations of Sound Transit, the court should reserve
2 ruling on the statutory interpretation questions arising in that situation.

3 Respectfully submitted this 17th day of January, 2003.

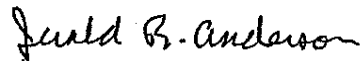
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November 15, 2002

The Honorable Sid Snyder
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The Honorable Jim West
Washington State Senate
PO Box 40006
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The Honorable Clyde Ballard
House of Representatives
PO Box 40600
Olympia, WA 98504-0600

The Honorable Frank Chopp
House of Representatives
PO Box 40600
Olympia, WA 98504-0600

Re: Initiative 776

Dear Senators Snyder and West and Representatives Ballard and Chopp:

This letter is to provide you with background information on issues involving the implementation of Initiative 776 with respect to local option transportation taxes. On its effective date of December 5, 2002, Initiative 776 will have the immediate effect of repealing the authority to impose any new local option motor vehicle excise taxes and license fees. It will also have the immediate effect of discontinuing license fees in some counties.

However, the fact that Sound Transit and Ring County have pledged certain local taxes and fees to bondholders to repay bonds has created contractual obligations that will limit its application to those taxes and fees during the time those bonds are outstanding. Under well established, constitutional law, governments cannot breach their contracts by refusing to collect taxes or fees to the detriment of bond purchasers who relied on those revenues in making their financial investments. We are still reviewing the nature and scope of those contractual obligations, the length of time and extent to which the constitutional law prohibiting the impairment of contracts requires these taxes and fees to be collected, and how the revenues are to be applied by the local agencies.

At this point in our review, we are able to provide the following information:

Initiative 776 will have these immediate impacts on local option vehicle excise taxes and fees:

- transit authorities will be prevented from imposing new motor vehicle excise taxes;
- all counties will be prevented from imposing new license fees on vehicles registered in the county; and



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- existing local license fees on vehicles in certain counties, **including** Snohomish County, Pierce County and Douglas County, will be discontinued.¹

However, both the federal and state constitutions contain provisions that are intended to prevent governments from refusing to meet legitimate financial obligations that are embodied in contractual promises. The Washington Supreme Court has specifically held that the authority to collect a pledged tax cannot be retracted, even by a duly enacted state law, so long as there are bondholders who have outstanding bonds and any failure to collect the tax would diminish the value of those bonds by any degree. The Court noted that to **refuse** to collect the tax in these circumstances would violate the constitutional provisions prohibiting the states from passing any law that impairs the obligation of contract. See Article I, § 10 of the United States Constitution and Article I, § 23 of the Washington State Constitution.

In the Voters' Pamphlet explanatory statement describing the effects of Initiative 776 if it were enacted into law, we informed the voters that the repeal of the authority to impose these local taxes and fees would be subject to these constitutional provisions, noting:

[S]tate and federal constitutional provisions **may** require repealed taxes or fees to continue to be collected, to the extent bonds have been issued pursuant to law pledging collection of specific taxes or fees, and to the extent that the value of those bonds would be diminished by the new law.

We are aware that in two instances the revenues from existing local motor vehicle excise taxes and local license fees were pledged to the repayment of bonds. A statute in effect before the enactment of Initiative 776 authorized Sound Transit to submit to their voters a ballot proposition to impose an excise tax on the value of motor vehicles. See RCW 81.104.160. Another statute specifically authorized Sound Transit to pledge those revenues to retire bonds. See RCW 81.104.180. According to information from Sound Transit, bonds were issued in 1999 with the pledge that, so long as the bonds were outstanding, the pledged taxes would be collected and the revenues would not be redirected to any other purpose.

The second instance involves King County. Before the enactment of Initiative 776, RCW 82.80.020 permitted counties to impose a license fee of up to \$15 per vehicle registered in the county. The legislature provided authority for these fees to be pledged to the repayment of local government general obligation and revenue bonds. We understand the Department of Licensing has been advised that King County sold just over \$38 million in such bonds backed by the local vehicle license fee imposed by King County.

The basic constitutional principle that applies to taxes and fees that are lawfully pledged to the repayment of bonds is clear. See *Municipality of Metro. Seattle v. O'Brien*, 86 Wn.2d 339 (1976) (where METRO issued bonds that pledged its local motor vehicle excise tax revenue for repayment, and the legislature subsequently repealed the local taxes, the Court held the local taxes had to continue to be remitted to METRO); and *Ruano v. Spellman*, 81 Wn.2d 820 (1973) (holding an initiative could not terminate the public Kingdome stadium project when bonds had

¹ We have read press reports that some of these counties are looking at whether there is a legal basis for continued collection; we are not aware of any basis for these counties to continue to collect. According to information received by the Department of Licensing, the revenues in these counties were not pledged to the repayment of bonds.

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already been issued and the initiative would impair the obligation of contract with the bondholders).

However, broad principles rarely address all of the issues in such complex matters. Therefore, we will be working with the appropriate officials to look at the details of the bond obligations and local governments' use of these revenues. After that review, we will be in a better position to determine the best way to assure that Initiative 776 is implemented to its full extent that is consistent with the contractual obligations to the bondholders.

Please feel free to contact me if you have any questions or would like additional information.

Sincerely,



NARDA PIERCE
Solicitor General
(360) 664-9018

NP/bw

cc: Senator Lisa Brown
Elaine Rose, Sr. Asst. Attorney General